



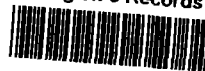
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 24 2004

EPA Region 5 Records Ctr.



298513

REPLY TO THE ATTENTION OF:

S-6J

Mr. Thomas L. Sansonetti
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Ben Franklin Station
Post Office Box 7611
Washington, D.C. 20044

RE: Expedited Referral for enforcing CERCLA Section 104 Order for Access at
Source Area 7 of the Southeast Rockford Groundwater Superfund Site,
Rockford, Illinois

Dear Mr. Sansonetti:

The United States Environmental Protection Agency ("U.S. EPA") hereby requests that the U.S. Department of Justice commence proceedings for the purpose of enforcing an Administrative Order for Access ("Access Order") under Section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, ("CERCLA") for the portion of Source Area 7 of the Southeast Rockford Groundwater Site ("Site") owned by Mr. Glen W. Ekberg, located in Winnebago County, Rockford, Illinois. (See Exhibit A Administrative Access Order).

Enforcement of the Access Order is necessary since, though Mr. Ekberg initially complied with the Access Order, he has since rescinded access to his portion of Source Area 7. Sampling work to implement the selected remedial design at Source Area 7 has begun. In order for the implementation of the remedial design to continue at Source Area 7, and to otherwise respond to a release or threat of a release of hazardous substances from Source Area 7, access to Mr. Ekberg's portion of Source Area 7 is necessary.

I. HISTORY OF THE SOUTHEAST ROCKFORD GROUNDWATER SITE
(SOURCE AREA 7)

The Site is located in Rockford, Winnebago County, Illinois. The Site is a 10-square mile contaminated groundwater plume fed by four (4) major Source Areas (4, 7, 9/10 and 11). The general Site borders are: the Rock River to the west, Harrison Avenue to the north, Alpine Road to the east and Sandy Hollow Road to the south. Source Area 7 is considered the principal source of contamination of the Site's groundwater aquifer. Source Area 7 is northwest of the intersection of Alpine and Sandy Hollow Road, at the eastern end of Balsam

Lane. The prior owner of Source Area 7 accepted industrial and other waste from the 1950s through 1964. The land use surrounding Source Area 7 is both residential and commercial/industrial. A city of Rockford Public Park comprises the southern border of Source Area 7.

The Site was discovered through sampling of Rockford municipal wells in 1981.

Subsequently, wide spread volatile organic compound contamination was noted in the Site aquifer. The Site aquifer essentially flows in a westerly direction. Removal actions and remedial investigations resulted in further study of the Site and development of a long-term clean up approach involving the identification of the abovementioned Source Areas as contributing to the groundwater contamination.

Based on this and other information, on March 31, 1989, pursuant to Section 105 of CERCLA, 42 U.S.C. §9605, EPA placed the Site on the National Priorities List, which is set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register.

The Remedial Investigations at the Site were completed in 1994. The Feasibility Study at the Site was completed in 2000. As part of the RI, soil samples were taken throughout the Site. Further, monitoring wells were installed on the Site. Sampling of soil and monitoring wells has determined that the soil and groundwater at the Site Source Areas are contaminated. Specifically, at Source Area 7, sampling has identified chemicals of concern in the Site groundwater, including, but not limited to xylene, naphthalene and 2-methyl naphthalene. The RI has also determined that the contaminated groundwater at Source Area 7 moves in a northwesterly direction. Soil sampling at Source Area 7 identified the presence of volatile organic compounds, such as 1,1,1-Trichloroethane, and Polynuclear Aromatic Hydrocarbons . Notable concentrations of dichloroethane, tetrachloroethene and trichloroethene were also detected in the soil gas at Source Area 7. All these previously mentioned chemicals found in the Source Area 7 groundwater and soil are hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

On June 11, 2002, U.S. EPA and IL EPA issued a ROD for the final remedial action at the Site. Under the ROD, IL EPA has the lead on remediation. This ROD called for addressing soil, non-aqueous phase liquid ("NAPL") and leachate at all of the Source Areas. By addressing the Source Areas, the ROD determined that the Site groundwater would eventually undergo natural attenuation. For Source Area 7, the ROD called for a combination of soil vapor extraction and an air sparging system, along with a multiphase extraction system with air stripper for the contaminated leachate and NAPL.

Prior to issuance of the 2002 ROD, the United States and the state of Illinois entered into a 1998 Consent Decree with the city of Rockford, IL for connection of citizens in affected areas of the Site to the city of Rockford water system. In 1999 and 2000, the United States and the state of Illinois entered into amended Consent Decrees with approximately 175 settling Covenant Beneficiaries and the city of Rockford, IL for past cost recovery for the entire Site,

and collection of monies for creation of a special account to help defray the costs of the Source Area 7 remediation. Defendant Glen W. Ekberg refused to participate in the Consent Decree settlements. In December 2001, the United States sued Mr. Ekberg for remaining past costs and future costs attributable to Source Area 7. That case is on-going.

II. DEFENDANT

Defendant Glen W. Ekberg purchased the property that partially comprises Source Area 7 in 1964. He continues to own this property at present. A legal description of the property owned by Mr. Ekberg is attached as Exhibit B.

To implement U.S. EPA's clean-up plan for the Source Area 7 property, U.S. EPA and IL EPA need access to Mr. Ekberg's portion of Source Area 7 to conduct and to ensure that the defendant will not interfere with the following activities: 1) maintenance of previously installed groundwater monitoring wells on the Source Area 7 property pursuant to the June 2002 ROD; 2) further sampling and monitoring of a) soil; b) vapor; c) surface- and groundwater; d) soil source control; e) leachate source control; f) air sparging; and, g) soil vapor extraction; and, 3) prevention of the present and future releases of hazardous substances from Source Area 7 into the Site groundwater plume. If access is not obtained, remedial activity at the Site will continue to be halted and the present and future releases of hazardous substances will continue unabated.

III. PERTINENT STATUTES

Pursuant to Section 104(e)(1) of CERCLA, 42 U.S.C. §9604(e)(1), EPA has the authority to enter private property to conduct investigations, studies, and cleanups where there is a reasonable basis to believe that there may be a release or threat of a release of a hazardous substance, pollutant or contaminant. Section 104(e)(3) of CERCLA, 42 U.S.C. §9604(e)(3), allows EPA to enter places where hazardous substances may be located or where entry is needed to determine the need for response or appropriate response, or to effectuate a response under CERCLA.

Under Section 104(e)(5)(A) of CERCLA, 42 U.S.C. §9604(e)(5)(A), EPA may issue an order directing compliance with its request for access. Further, EPA may request that a civil action be commenced to compel compliance with a request for access or with an order for access issued pursuant to Section 104(e)(5)(A), 42 U.S.C. §9604(e)(5)(A). A court will enjoin interference with an issued order for access unless the demand for access is arbitrary and capricious, an abuse of discretion or otherwise not in accordance with law. Section 104(e)(5)(B)(i) of CERCLA, 42 U.S.C. §9604(e)(5)(B)(i). The court may also assess a civil penalty not to exceed \$32,500 a day for each day of noncompliance. Section 104(e)(5) of CERCLA, 42 U.S.C. §9604(e)(5).

IV. EPA'S REQUEST FOR ACCESS

By repeated telephone and written communications between November 2002 and March 2004, counsel for U.S. EPA and IL EPA sought the cooperation of defendant in gaining access to his portion of Source Area 7. (See Exhibit C). Defendant refused to cooperate. On April 21, 2004, following the defendant's continued refusal to provide access to his portion of Source Area 7, the Acting Director of the Superfund Division for Region 5 issued an Administrative Order, Docket No. V-W-04-C-786, ("Access Order") pursuant to Section 104(e) of CERCLA, effective on May 3, 2004. The Access Order directed the defendant to comply with U.S. EPA's request for access to his portion of Source Area 7 so that EPA or its designated representatives could implement the remedial action set forth in the 2002 ROD. (See Exhibit A).

On May 4, 2004, defendant signed an access agreement with IL EPA (See Exhibit D). By letter dated August 30, 2004, the defendant denied access to his portion of Source Area 7 to IL EPA. (See letter and declaration of IL EPA contractor Mr. John Grabs, attached as Exhibit E and F respectively). On September 7, 2004, U.S. EPA issued a Notice of Noncompliance with the Access Order to defendant's counsel, requesting a response by September 10, 2004. (See Exhibit G). On September 9, 2004, U.S. EPA received a (facsimile only) letter from defendant's counsel refusing to comply with the Notice of Noncompliance. (See Exhibit H).

V. PROPOSED ACTION

U.S. EPA proposes that the U.S. Department of Justice commence an action in federal district court, as soon as possible, to 1) obtain an order for access to defendant Ekberg's portion of Source Area 7 of the Site; and 2) obtain civil penalties under Section 104 of CERCLA of not more than \$32,500 per day for failing to comply with U.S. EPA's April 2004 Access Order.

If you have any questions concerning this matter, please do not hesitate to call Tom Turner, Associate Regional Counsel at (312) 886-6613, or Russ Hart, Remedial Project Manager at (312) 886-4844.

Sincerely yours,



Richard C. Karl, Director
Superfund Division



Enclosures

cc: Thomas Skinner
Assistant Administrator for Enforcement and Compliance Assurance

Susan Bromm, Director
Office of Site Remediation Enforcement

Bill Brighton
Environmental Enforcement Section
U.S. Department of Justice



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

2012/11/12
300A
REPLY TO THE ATTENTION OF

**CERTIFIED MAIL and OVERNIGHT
RETURN RECEIPT REQUESTED**

Mr. Glen W. Ekberg
c/o: James E. Meason, Esq.
113 W. Main Street
Rockton, Illinois 61072

R-6J

Re: Order Directing Compliance With Request for Access
Glen W. Ekberg-owned Portion of Source Area 7, Southeast Rockford Groundwater
Contamination Superfund Site, Rockford, Winnebago County, Illinois

Dear Mr. Ekberg:

Enclosed please find a unilateral Administrative Order issued by the U.S. Environmental Protection Agency (U.S. EPA) under Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. Section 9604.

The Order requires you to notify U.S. EPA within 10 calendar days after the issuance date of the Order whether you will provide the access required by the Order.

Please note that the Order allows an opportunity for a conference if requested within 3 days after your receipt of the Order, or if no conference is requested, an opportunity to submit comments no later than 2 calendar days before the effective date of this Order.

If you have any questions regarding the Order, feel free to contact Thomas Turner, Associate Regional Counsel, at (312) 886-6613 or Russ Hart, Remedial Project Manager at (312) 886-4844.

Sincerely yours,

Richard C. Karl
Acting Director, Superfund Division

Enclosure

Exhibit A

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION V

In the Matter of:)
Source Area 7 - Property of Mr. Glen W. Ekberg,)
SOUTHEAST ROCKFORD GROUNDWATER)
CONTAMINATION SUPERFUND SITE)
Rockford, Winnebago County, Illinois)

Mr. Glen W. Ekberg,)
Respondent.)

Proceeding Under Section 104(e) of the)
Comprehensive Environmental Response,)
Compensation and Liability Act,)
42 U.S.C. § 9604(e).)

ADMINISTRATIVE ORDER
IN AID OF ACCESS

EPA Docket No.

V-W- '04 -C-786

I. JURISDICTION

1. This Administrative Order in Aid of Access ("Order") is issued to Mr. Glen W. Ekberg, Respondent, pursuant to the authority vested in the President of the United States by Section 104(e)(5) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9604(e)(5), and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR § 300.400(d). This authority was delegated to the Administrator of the United States Environmental Protection Agency ("EPA") on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923, delegated to the Regional Administrators of EPA on April 17, 1987, by EPA Delegation No. 14-6, and further delegated to the Director of the Superfund Division by Regional Delegation 14-6.

II. STATEMENT OF PURPOSE

2. This Order requires Respondent to grant EPA and its authorized representatives, including the Illinois Environmental Protection Agency and its employees and authorized representatives, entry and access to the property described in Paragraph 3 below for the purpose of performing a Superfund Remedial Design and Remedial Action (RD/RA) pursuant to the requirements of the June 11, 2002 Record of Decision (ROD) in this matter. This Order further requires Respondent and/or any employees, agents or representatives of Respondent, to refrain from interfering with access to the Property by EPA, and its authorized representatives for the purposes set forth herein.

III. FINDINGS OF FACT

3. The Respondent has owned the property at the Source Area 7 portion of the Site since 1964. Source Area 7 is essentially located within the following boundaries: the Illinois Central Gulf and Chicago Northwestern Railroad tracks on the north, Sandy Hollow Road on the south, Alpine Road on the east and Twentieth Street to the west. Source Area 7 is also bounded on the east and west by residential properties and on the west and south by a community park. The legal description of the Southeast Rockford Groundwater Contamination Superfund Site (the Site) Source Area 7 Portion owned by Mr. Glen W. Ekberg is as follows:

That part of the Northwest 1/4 of Section 5 in Township 43 North, Range 2 East of the Third Principal Meridian. Winnebago County, Illinois, lying Southerly of the Illinois Central Railroad right of way; excepting highways.

Also part of the East Half (1/2) of the South West Quarter (1/4) of said Section

Five (5), Township and Range aforesaid, described as follows, to wit: Beginning at the North East corner of said quarter (1/4) section; thence, South, along the East line of said quarter (1/4) section, twenty-two (22) rods; thence West, parallel with the North line of said quarter (1/4) section to the West line of the East Half (1/2) of the South West Quarter (1/4) of said Section Five (5); thence North along said West line, twenty-two (22) rods to the North line of said quarter (1/4) section; thence East along said North line to the place of beginning; excepting from the last described tract a lane two (2) rods in width across the North side thereof, as same is described in Warranty Deed from Adelia Barnum et al to Daniel H.

Barnum, dated April 1, 1871 and recorded in Book 89 of Deeds, page 496 in said Recorder's Office; excepting the rights granted to Central Illinois Electric and Gas Co., by instrument dated April 25, 1951 and recorded in Book 767 of Recorder's Records, page 16 in said Recorder's Office.

and also,

The North 2 rods of the Northeast Quarter of the Southwest Quarter of Section 5, Township 43 North, Range 2 East of the Third Principal Meridian, excepting therefrom that part thereof conveyed to the State of Illinois, for the use of the Department of Public Works and Buildings by Warranty Deed dated July 29, 1963 and recorded August 16, 1963 in Book 1406 on Page 61, in Winnebago County, Illinois.

The North Half (1/2) of the West Half (1/2) of the South West Quarter (1/4) of Section Five (5), Township Forty-three (43) North, Range Two (2) East of the

Third (3rd) Principal Meridian, excepting the rights of the Central Illinois Electric and Gas Co., over said premises as described in instrument dated April 19, 1951 and recorded in Book 757 of Recorder's Records on page 18 in the Recorder's Office of Winnebago County, Illinois.

Also the East thirty-three (33) feet in width of the South half ($\frac{1}{2}$) of the West Half ($\frac{1}{2}$) of the South West Quarter ($\frac{1}{4}$) of said Section Five (5), township and range aforesaid; excepting the South three hundred (300) feet thereof conveyed by Harry W. Littlejohn and Myrtle I. Littlejohn, his wife, to Union Grange No. S11 by Warranty Deed dated April 16, 1949 and recorded in Book 655 of Recorder's Records on page 458 in said Recorder's Office. Also part of the West Half ($\frac{1}{2}$) of the South West Quarter ($\frac{1}{4}$) of said Section Five (5), township and range aforesaid bounded and described as follows, to wit; Beginning at a point in the North line of Sandy Hollow Road two hundred (200) feet West of the East line of said eighty (80) acre tract, and thirty-three (33) feet North of the South line of said section; thence North, parallel with the East line of the West Half ($\frac{1}{2}$) of the South West Quarter ($\frac{1}{4}$) of said section two hundred sixty-seven (267) feet; thence East, parallel with the South line of said section, one hundred sixty-seven (167) feet; thence North parallel with the East line of the West Half ($\frac{1}{2}$) of the South West Quarter ($\frac{1}{4}$) of said section, thirty-three (33) feet; thence West, parallel with the South line of said section, two hundred (200) feet; thence South parallel with the East line of the West half ($\frac{1}{2}$) of the South West Quarter ($\frac{1}{4}$) of said section three hundred (300) feet to the North line of Sandy Hollow Road, thence

East along said North line thirty-three (33) feet to the place of Beginning.

4. On March 31, 1989, the Site was listed on the CERCLA National Priorities List, 40 CFR Part 300, App. B, pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. § 9605(a)(8)(B).

5. Source Area 7 of the Site has undergone sampling for soil, water and soil vapor components during the 1991-1994 Remedial Investigation (RI), and in June 2002 a 153-page ROD was issued by EPA and Illinois EPA containing results of the RI and subsequent Feasibility Study (FS), a Proposed Plan for RD/RA and a Responsiveness Summary. The ROD documents the presence of volatile organic compounds (VOCs), leachate materials, soil debris, polynuclear aromatic compounds, xylene, metals, pesticides and soil vapor at Source Area 7.

6. Historically, Source Area 7 was used as a gravel pit, and portions were also operated for agricultural purposes. Additionally, EPA has received reports of illegal dumping of waste materials on a regular basis, both in the past and the present, at Source Area 7. The geology of Source Area 7 correlates well with past reports (and aerial photodocumentation) of quarrying and land filling, and depths to groundwater vary throughout Source Area 7. Unconsolidated and bedrock aquifer zones allow for groundwater transport in a northwest direction. During subsequent RI sampling in 1995 and 2001, notable concentrations of 1,1,1-TCA (dichloroethane - 3.8 parts-per-million(ppm)), PCE (tetrachloroethene - 1.1ppm) and TCE (trichloroethene - 0.59ppm) were detected in soil gas. Source Area 7 soil sampling from the same time periods revealed elevated concentrations of ethylbenzene (31ppm), toluene(23ppm) and xylene (ETX - 210ppm), along with chlorinated VOCs. Further, the 1995 RI sampling of groundwater and surface water at Source Area 7 indicated concentrations of many of the above mentioned VOCs at levels of concern, as well as the possibility of Non-Aqueous Phase Liquid (NAPL), that is,

solvents or other chemicals of concern that exist within the water table to such a significant degree that they have not decomposed. Finally, EPA and Illinois EPA have documented that Source Area 7 continues to supply the contaminated groundwater plume that moves through the overall Site.

7. EPA and Illinois EPA have previously installed and maintained monitoring wells on the Source Area 7 property. Mr. Ekberg's current posture makes it impossible to access these wells and make use of them for required response activities.

8. To address the release or threatened release of hazardous substances at Source Area 7 of the Site, EPA (and Illinois EPA) are planning to conduct certain response actions. These actions, are for implementation of RD/RA determined in the June 2002 ROD, and include further sampling and monitoring of soil, soil vapor, surface- and groundwater, soil source control, leachate source control, air sparging and soil vapor extraction.


9 To perform the response actions described above, it will be necessary for employees, agents, contractors, and other representatives of EPA (and Illinois EPA) to immediately enter the Source Area 7 property owned or controlled by the Respondent referred to above. The activities for which entry is required include: Further sampling and monitoring of Source Area 7 soil, soil vapor and surface- and groundwater, construction of the designated Remedial Design and implementation of the designated Remedial Action, pursuant to the June 2002 ROD for the Site.

10. EPA estimates that the duration of the required entry and access will be approximately 2 years for on-Site activities and further monitoring of well samples for 15-25 years.

11. Despite requests from representatives of EPA (and Illinois EPA), the Respondent has refused to provide access for purposes of performing the response activities described above.

These requests include repeated telephone conversations with Respondent's counsel in 2003 and 2004, letters from EPA Associate Regional Counsel Thomas Turner in November 2002 and February 2004, letters from Illinois Sr. Assistant Attorney General Elizabeth Wallace in December 2003 and March 2004, as well as frequent informal communications from the United States Department of Justice trial counsel assigned to this case at court-ordered discovery sessions, status hearings and settlement conferences between 2002 and 2004.

12. EPA and its contractors have been ready to perform the sampling since the Fall of 2003, but have been prevented from so doing because of the Respondent's failure to grant access. This refusal increases the risk of release or continued release of hazardous substances from the Source Area 7 portion of the Site. The threat of continuing contamination through groundwater or soil vapor in the immediate vicinity of a local community park and personal residences continues unabated.



IV. Determinations

13. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

14. The Respondent, Mr. Glen W. Ekberg, is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

15. All of the substances listed in paragraph 6 above are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

16. The past and present disposal and migration of hazardous substances at or from Source Area 7 of the Site constitutes an actual "release" or a threat of such a release into the "environment" within the meaning of Sections 101(8) and 101(22) of CERCLA, 42 U.S.C. §§

9601(8) and (22), and thus a reasonable basis to believe that there may be a release or threat of release within the meaning of Section 104(e)(1) of CERCLA, 42 U.S.C. § 104(e)(1).

17. The property owned or controlled by the Respondent referred to in paragraph 3 above is a facility, place, or property:

- a. where hazardous substances may have been disposed of;
- b. from which hazardous substances have been or may have been released;
- c. where such release is or may continue to be threatened;
- d. where entry is needed to effectuate a response action,

within the meaning of Section 104(e)(3) of CERCLA, 42 U.S.C. § 9604(e)(3).

18. Entry to property owned or controlled by the Respondent by agents, contractors, or other representatives of the United States (and the State of Illinois) is for the purposes of taking a response action, and otherwise enforcing the provisions of CERCLA, within the meaning of Section 104(e)(1) of CERCLA, 42 U.S.C. § 9604(e)(1).

19. EPA's request for access to property owned by the Respondent has been denied.

V. ORDER

20. The Respondent shall provide EPA (and Illinois EPA), their officers, employees, agents, contractors, and other representatives, full and unrestricted access at all reasonable times to the Respondent's portion of Source Area 7 of the Site for the purpose of conducting response activities, including but not limited to performance of RD/RA activities, including sampling, monitoring, construction, and remediation activities pursuant to the June 2002 Superfund ROD. The Respondent shall not interfere with EPA's exercise of its access authorities pursuant to 42 U.S.C. § 9604(e)(3) and 40 C.F.R. § 300.400(d), and shall not interfere with or otherwise limit

any activity conducted at the Site pursuant to this Order by EPA, its officers, employees, agents, contractors, or other representatives. Any such interference shall be deemed a violation of this order.

21. Nothing herein limits or otherwise affects any right of entry held by the United States (or the State of Illinois) pursuant to applicable laws, regulations, or permits. This Order applies to and is binding upon Respondent and his agents, heirs, successors, and assigns.

22. In the event of any conveyance by Respondent, or Respondent's agents, heirs, successors and assigns, of an interest in any property which includes an access area, Respondent and Respondent's agents, heirs, successors and assigns shall convey the interest so as to insure continued access by EPA (and Illinois EPA) and/or their representatives for the purpose of carrying out the activities pursuant to this Order. Any such conveyance shall restrict the use of such property so that the use will not interfere with activities undertaken pursuant to this Order. Respondent, or Respondent's agents, heirs, successors and assigns shall notify EPA in writing at least thirty (30) days prior to the conveyance of any interest in property where an access area is located, and shall notify the other parties involved in the conveyance prior to the transfer, of the provisions of this Order.

VI. ENFORCEMENT

23. Compliance with this Order shall be enforceable pursuant to Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5). Failure to comply may also permit a court to subject the Respondent to civil penalties of up to \$32,500 for each day of each violation, as provided in Sections 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5), and the Civil Monetary Penalty Inflation Adjustment Rule, 69 Fed. Reg. 7121, 40 C.F.R. Part 19.4, and/or punitive damages in

an amount up to three times the amount of any costs incurred by the United States as a result of such failure, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Nothing herein shall preclude EPA from taking such other actions as may be necessary to protect the public health or welfare or the environment and recovering the costs thereof.

VII. Opportunity to Confer

24. Within 3 days after receipt of this Order, Respondent may request a conference with EPA to be held no later than 2 days before the effective date of this Order on any matter pertinent to this Order, including its applicability, the factual findings and the determinations upon which it is based, the appropriateness of any actions the Respondent is ordered to take, or any other relevant and material issues or contentions which Respondent may have regarding this Order. This conference is not an adversarial proceeding and is not part of any proceeding to enforce or challenge this Order. The Respondent may appear in person or by an attorney or other representative at the conference. The Respondent may also submit written comments or statements of position on any matter pertinent to this Order no later than the time of the conference, or two days before the effective date of this Order if the Respondent does not request a conference. EPA will deem the Respondent to have waived his right to the conference or to submit written comments if he fails to request the conference or submit comments within the specified time period. Any request for a conference or written comments or statements should be submitted to: Tom Turner, Assoc. Regional Counsel, U.S. EPA, Office of Regional Counsel, Region 5, 77 W. Jackson Blvd., (mail code: C-14J), Chicago, Illinois 60604, Telephone: (312)886-6613.

VIII. Administrative Record

25. EPA has established an Administrative Record which contains the documents that form the basis for the issuance of this Order. It is available for review by appointment on weekdays between the hours of 8:00 am and 5:00 pm at the EPA regional offices in Chicago, Illinois. To review the Administrative Record, please contact Tom Turner at (312)886-6613 to make an appointment. A copy of the Administrative Record is also available for viewing at the Waste Records Center (7th Floor) of the EPA Region 5 office, 77 W. Jackson Blvd., Chicago, Illinois 60604.

26. Nothing in this Order constitutes a waiver, bar, release, or satisfaction of or a defense to any cause of action which EPA has now or may have in the future against Respondent, or against any entity which is not a party to this Order.

27. Nothing in this Order shall affect in any manner the right of EPA to issue any other orders to or take any other administrative or civil action against Respondent or any other parties under CERCLA which relate to this Site or any other site.

28. Nothing in this Order constitutes a decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

IX. Effective Date; Computation of Time

29. Because of the immediate need to conduct the activities described above, this Order is effective on the 10th calendar day following the date of issuance written below.

30. All times for performance of obligations under this Order shall be calculated from the effective date. For purposes of this Order, the term "day" shall mean a calendar day unless otherwise specified. When computing any period of time under this Order, if the last day would

fall on a Saturday, Sunday, or federal legal holiday, the period shall run until the next working day.

X. Notice of Intent to Comply

31. As of the effective date of this Order, Respondent shall notify EPA in writing whether the Respondent will comply with the terms of this Order. Respondent's failure to notify EPA of his unconditional intent to fully comply with this Order by the time the Order becomes effective shall be construed as a denial of EPA's request for access and shall constitute a violation of this Order by Respondent. Such written notice shall be sent to:

Tom Turner
Office of Regional Counsel
United States Environmental Protection Agency, Region 5
77 W. Jackson Blvd., mail code: C-14J
Chicago, Illinois 60604
Telephone: (312)886-6613

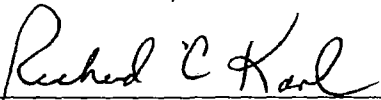
XI. Termination and Modification

32. This Order shall terminate when EPA so orders.

33. This Order may be amended or modified only by EPA in writing. Any such amendments or modifications shall be effective when signed by the Superfund Division Director or the Acting Regional Administrator.

SO ORDERED.

Date: 4-21-04


Richard C. Karl
Acting Director, Superfund Division

LEGAL DESCRIPTION OF GLEN W. EKBERG
PORTION OF SOURCE AREA 7

The legal description of the Southeast Rockford Groundwater Contamination Superfund Site (the Site) Source Area 7 Portion owned by Mr. Glen W. Ekberg is as follows:

That part of the Northwest 1/4 of Section 5 in Township 43 North, Range 2 East of the Third Principal Meridian. Winnebago County, Illinois, lying Southerly of the Illinois Central Railroad right of way; excepting highways.

Also part of the East Half (1/2) of the South West Quarter (1/4) of said Section Five (5), Township and Range aforesaid, described as follows, to wit: Beginning at the North East corner of said quarter (1/4) section; thence, South, along the East line of said quarter (1/4) section, twenty-two (22) rods; thence West, parallel with the North line of said quarter (1/4) section to the West line of the East Half (1/2) of the South West Quarter (1/4) of said Section Five (5); thence North along said West line, twenty-two (22) rods to the North line of said quarter (1/4) section; thence East along said North line to the place of beginning; excepting from the last described tract a lane two (2) rods in width across the North side thereof, as same is described in Warranty Deed from Adelia Barnum et al to Daniel H. Barnum, dated April 1, 1871 and recorded in Book 89 of Deeds, page 496 in said Recorder's Office; excepting the rights granted to Central Illinois Electric and Gas Co., by instrument dated April 25, 1951 and recorded in Book 767 of Recorder's Records, page 16 in said Recorder's Office.

and also,

The North 2 rods of the Northeast Quarter of the Southwest Quarter of Section 5, Township 43 North, Range 2 East of the Third Principal Meridian, excepting therefrom that part thereof conveyed to the State of Illinois, for the use of the Department of Public Works and Buildings by Warranty Deed dated July 29, 1963 and recorded August 16, 1963 in Book 1406 on Page 61, in Winnebago County, Illinois.

The North Half (1/2) of the West Half (1/2) of the South West Quarter (1/4) of Section Five (5), Township Forty-three (43) North, Range Two (2) East of the Third (3rd) Principal Meridian, excepting the rights of the Central Illinois Electric and Gas Co., over said premises as described in instrument dated April 19, 1951 and recorded in Book 767 of Recorder's Records on page 18 in the Recorder's Office of Winnebago County, Illinois.

Also the East thirty-three (33) feet in width of the South half (1/2) of the West Half (1/2) of the South West Quarter (1/4) of said Section Five (5), township and range aforesaid; excepting the South three hundred (300) feet thereof conveyed by Harry W. Littlejohn and Myrtle I. Littlejohn, his wife, to Union Grange No. S11 by Warranty Deed dated April 16, 1949 and recorded in Book 655 of Recorder's

Exhibit B

Records on page 458 in said Recorder's Office. Also part of the West Half ($\frac{1}{2}$) of the South West Quarter ($\frac{1}{4}$) of said Section Five (5), township and range aforesaid bounded and described as follows, to wit; Beginning at a point in the North line of Sandy Hollow Road two hundred (200) feet West of the East line of said eighty (80) acre tract, and thirty-three (33) feet North of the South line of said section; thence North, parallel with the East line of the West Half ($\frac{1}{2}$) of the South West Quarter ($\frac{1}{4}$) of said section two hundred sixty-seven (267) feet; thence East, parallel with the South line of said section, one hundred sixty-seven (167) feet; thence North parallel with the East line of the West Half ($\frac{1}{2}$) of the South West Quarter ($\frac{1}{4}$) of said section, thirty-three (33) feet; thence West, parallel with the South line of said section, two hundred (200) feet; thence South parallel with the East line of the West half ($\frac{1}{2}$) of the South West Quarter ($\frac{1}{4}$) of said section three hundred (300) feet to the North line of Sandy Hollow Road, thence East along said North line thirty-three (33) feet to the place of Beginning.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

0000007

NOV 15 2002

By Overnight Mail

REPLY TO THE ATTENTION OF

Mr. Glen W. Ekberg
8065 Harrisville Road
Rockford, Illinois 61109

C-14J

Re: Southeast Rockford Groundwater Superfund Site - Rockford (Winnebago county) IL
Area 7 Access and Use Issues

Dear Mr. Ekberg:

It has come to the attention of the United States Environmental Protection Agency (US EPA) and the Illinois Environmental Protection Agency (IL EPA) that you are currently engaged in dumping or earth moving activities at the portion of the above referenced National Priorities List, 40 C.F.R. Part 300, Appendix B, Superfund Site, in the same area wherein you have previously been advised not to perform such activities. Between November 2000 and February 2001, in a series of combined letters and information requests, US EPA advised you of its serious concern regarding your earth-moving, dumping and other activities at or in the area immediately adjacent to Area 7 of the Superfund Site. Further, the Agencies have received information suggesting that you are allowing or encouraging other individuals to perform the same activities at the Site. These actions are neither advisable nor desired by US EPA, IL EPA or affected members of the general public for the reasons set forth in this letter.

As you were previously notified in a November 2000 letter from US EPA, the Area 7 portion of the Southeast Rockford Groundwater Superfund Site is defined as the area essentially located within the following boundaries: the Illinois Central Gulf and Chicago Northwestern Railroad tracks on the north, Sandy Hollow Road on the south, Alpine Road on the east and Twentieth Street to the west. This entire area has been tested, sampled for soil, water and soil vapor components, and undergone extraordinary scientific and technical review since the 1991-1994 Remedial Investigation (RI), and in June 2002 a 153-page Record of Decision (ROD) was issued containing results of the RI and subsequent Feasibility Study (FS), a Proposed Plan for Remedial Action and a Responsiveness Summary. Altogether, these activities represent a great deal of manpower and federal and state taxpayer dollars, and were undertaken by the Agencies authorized to deal with this sort of environmental contamination, and supported by informed public assent to the final proposed remedial solutions.

In order for the state and federal Agencies to perform a successful and efficient clean up of Area 7, we will need the cooperation of land owners such as yourself. It is necessary that you stop placing fill and other materials in the portion of your property that lies within Area 7 (defined above), specifically, east of Ekberg Park, and on either side of the creek which flows along the park's northern border and the rail road tracks running alongside the creek. It is also necessary

Exhibit C

that you no longer allow other parties to have access to the portion of your property that lies within Area 7. It is essential that the dumping of soil, fill, debris, concrete, asphalt and any other objects or items cease immediately in and around the immediate vicinity of Area 7. No one should be disturbing, adding to or removing any soil or water in the Area 7 location. It is also essential that the grade of the land in that area not be altered for the time being, until the nature and extent of specific contamination may be determined and an appropriate response action developed. The soil, water and other materials at that part of Area 7 may all be contaminated. IL EPA has placed groundwater monitoring wells in the above described portion of Area 7. These wells and surrounding ground areas must be left undisturbed. This is to prevent cross-contamination of pollutants, migration off-site of hazardous substances, and any other factors that may exacerbate environmental contamination at this Superfund Site. In the case of the dumping of fill and other materials at your portion of the Area 7 Site, US EPA and IL EPA have no way of knowing whether any contaminated materials may be adding to the problems of the overall Site, nor whether existing contamination may accidentally be spread around a broader area and thus made more difficult to test, treat or remove. There is also the possibility that your actions may have released hazardous substances from the Area 7 portion of the Site to other locations.

For these reasons, US EPA and IL EPA need to know as much as possible about the nature and content of the materials that you have recently brought or allowed to be brought to the portion of your property that is a part of Area 7. If you cannot provide manifests and quality assured analyses of samples of the materials left at Area 7 of the Superfund Site, then US EPA and IL EPA will need to take samples for analysis within the next approximately thirty (30) days. IL EPA has the lead in the cleanup at the Site, and if you do not first contact IL EPA, within the next ten (10) days in response to this letter, you will be contacted by someone from the appropriate IL EPA office and a sampling schedule will be arranged. The contact at IL EPA is Mr. Thomas Williams, Project Manager, telephone number: 815/223-1714. It is advisable that you cooperate fully with IL EPA in this matter.

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) provides administrative authorities to US EPA, including authority to issue compliance orders regarding access to information, entry, inspection and sampling and the taking of necessary response actions at places or properties where hazardous substances have been or may have been released. Moreover, it is a violation of federal law to improperly fail to comply with such orders concerning access to and duly designated Agency response to an imminent and substantial endangerment to public health, welfare or the environment at a Superfund site. The potential civil liability can be up to \$27,500.00 per day per violation of such compliance orders. See, CERCLA Sections 104(e)(1)-(5) and 106(b)(1), 42 U.S.C. Sections 9604(e)(1)-(5) and 9606(b)(1).

We very much want to resolve this specific matter with you informally, in a manner that is reasonable, equitable, proper and protective of the general public and the environment. Please respond to this letter and make proper and necessary arrangements to cease any and all dumping

of fill or any other material (by any party) at the Area 7 part of your property, and contact IL EPA about sampling the materials of concern that I have described. If we cannot come to an accord and agreement on these matters of access and proper control of the Area 7 Superfund Site informally by means of correspondence and discussion, then it may be necessary for US EPA and IL EPA to consider other avenues of recourse including enforcement remedies available to the agencies under CERCLA.

US EPA and IL EPA will be contacting you in the near future about expanding the access agreement that you signed in May 1992, in order to prepare for the performance of Remedial Design and Remedial Action work over the next 18 to 24 months. US EPA and IL EPA each reserve the right to take necessary legal actions to ensure compliance with relevant state and federal laws in this matter. Please feel free to contact me with any comments or questions at 312/886-6613.

Very truly yours,



Tom Turner
Associate Regional Counsel

cc:  R. Hart, RPM (SR-6J)
US EPA

M. Reed, Esq/F. Biros, Esq.
US Dept. of Justice - ENRD/EES

T. Williams, Project Manager
IL EPA - LaSalle, IL Office

P. Jagiello, Esq.
IL EPA Law Section

E. Wallace, Esq.
IL AG Office



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
17 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3597

000000

FEB 09 2004

By Facsimile and Overnight Mail

REPLY TO THE ATTENTION OF

James E. Meason, Esq.
113 W. Main Street
Rockton, IL 61702-2416

C-14J

Re: Improper Land Use Issues - Area 7 - Southeast Rockford Groundwater Superfund Site -
Rockford (Winnebago County) IL

Dear Mr. Meason:

It has come to the attention of the United States Environmental Protection Agency (US EPA) and the Illinois Environmental Protection Agency (IL EPA) that your client, Mr. Glen W. Ekberg of Rockford, Illinois, is currently engaged in (or is directly arranging for or openly condoning) dumping or earth moving activities in the same area of the above referenced National Priorities List, 40 C.F.R. Part 300, Appendix B, Superfund Site, where he has previously been advised not to perform (or allow the performance of) such activities. Such actions may be a violation of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Sections 104(e)(1)-(5) and 106(b)(1), 42 U.S.C. §§ 9604(e)(1)-(5) and 9606(b)(1).

Mr. Ekberg was originally notified of US EPA concern regarding his property as a Superfund Site in October 1993. Between November 2000 and February 2001, and then again in November 2002 and January 2003, in a series of letters, information requests and a notice of violation of State of Illinois solid waste disposal laws, US EPA and IL EPA have repeatedly advised Mr. Ekberg of their serious concern regarding his earth-moving, dumping and other activities at or in the area immediately adjacent to Area 7 of the Superfund Site. Further, the Agencies continue to observe and receive information suggesting that Mr. Ekberg is knowingly allowing or encouraging other individuals to perform the same activities at the Site. Between June 2003 and January 2004, IL EPA personnel continued to observe and record: 1) instances of fill material being placed and distributed on the Area 7 Site property, 2) the disturbance of areas determined to be of high risk in terms of soil contamination, 3) the unauthorized placement of fill material in the proximity of an IL EPA groundwater monitoring well (MW-112), and 4) the presence of earth moving excavation equipment and other vehicular traffic indicating the insufficiency of the gate installed at the Groom Industries entrance point to the Site property. US EPA has explained in prior correspondence that these activities interfere with the Agencies' response action at this Site and cannot continue.

As you know, Mr. Ekberg was notified, in a November 2000 letter from US EPA, that the Area 7 portion of the Southeast Rockford Groundwater Superfund Site is defined as the area essentially located within the following boundaries: the Illinois Central Gulf and Chicago Northwestern Railroad tracks on the north, Sandy Hollow Road on the south, Alpine Road on the

east and Twentieth Street to the west. The most immediate area of concern is north of Ekberg Park and west of groundwater monitoring well MW-112. The entire Site area has been tested, sampled for soil, water and soil vapor components, and undergone comprehensive scientific and technical review since the 1991-1994 Remedial Investigation (RI). In June 2002 a 153-page Record of Decision (ROD) was issued containing results of the RI and subsequent Feasibility Study (FS), a Proposed Plan for Remedial Action and a Responsiveness Summary.

Mr. Ekberg's actions are directly interfering with the state and federal Agencies' ability to perform a successful and efficient clean up of Area 7. Ideally, landowners such as Mr. Ekberg should cooperate with our clean up efforts. However, at the very least, it is necessary that Mr. Ekberg refrain from interfering with US EPA response actions. We insist that he take the following steps: (1) stop placing (or allowing easy access for the placement of) fill and other materials in the portions of his property that lie within Area 7 (defined above), and on either side of the creek which flows along the park's northern border (or in any way that would impede the flow of the creek), or near the rail road tracks running alongside the creek. (2) It is also necessary that he forbid and properly restrict access from other parties to the portion of his property that lies within Area 7. (3) **It is essential that the dumping of soil, fill, debris, concrete, asphalt and any other objects or items cease immediately in and around the immediate vicinity of Area 7.** No one should be disturbing, adding to or removing any soil or water in the Area 7 location. (4) It is also essential that the grade of the land in the above mentioned area of concern (north of Ekberg Park and west of groundwater monitoring well MW-112) not be altered for the time being, until the nature and extent of specific contamination may be determined and an appropriate remedy implemented. Mr. Ekberg's current activities at Area 7 may serve to inhibit IL EPA's planned 2004 sampling and investigation. (5) IL EPA has placed groundwater monitoring wells in Area 7. **These wells must be left alone, and the surrounding surface area must be undisturbed.**

The soil, water and other materials within Area 7 may all be contaminated. These prohibitions are designed to prevent cross-contamination of pollutants, migration off-site of hazardous substances, and any factors that may add to the overall problems at the Superfund Site. In the case of the dumping of fill and other materials at Mr. Ekberg's portion of the Area 7 Site, US EPA and IL EPA have no way of knowing what contaminated materials may be adding to the problems of the overall Site, nor what contamination may accidentally be spread around a broader area and thus made more difficult to test, treat or remove. Mr. Ekberg's actions may have also released hazardous substances from the Area 7 portion of the Site.

Finally, it is essential that US EPA and IL EPA be informed as much as possible about the content of the materials that Mr. Ekberg has recently brought or allowed to be brought to the portion of his property that is a part of Area 7. If he cannot provide manifests and quality assured samples of the materials left at Area 7 of the Superfund Site, then US EPA and IL EPA will need to take samples for analysis as soon as can be arranged. IL EPA is taking the lead in the clean up at the Site and Mr. Ekberg should arrange a sampling schedule with IL EPA staff. The contact at IL EPA is Mr. Thomas C. Williams, Project Manager, telephone number:

815/223-1714. We would look forward to Mr. Ekberg's cooperation in this matter.

IL EPA has also noted some difficulty in securing access from Mr. Ekberg for necessary Superfund Remedial Investigation work at the Area 7 portion of the Site. In December 2003, the Illinois Attorney General's office contacted Mr. Ekberg concerning access and has yet to receive a response. As Mr. Ekberg has previously been warned, if he continues to fail to provide EPA access to Area 7, and otherwise interferes with EPA's Superfund cleanup activities at Area 7, EPA may issue an administrative order under CERCLA Section 104(e), requiring access [and cooperation] and noninterference with EPA's response actions. Failure to comply with such an order would subject Mr. Ekberg to civil penalties up to \$27,500 per day of noncompliance under CERCLA Section 104(e).

US EPA and IL EPA are willing to meet with you and your client to discuss the seriousness of this matter and recommend necessary steps to avoid further problems of this nature. Both agencies strongly advise that Mr. Ekberg consider and follow the steps outlined within this letter to remedy this situation. In the event that Mr. Ekberg chooses to continue to follow his present course of actions involving the Site, I would caution you that he may face further legal action based on a probable violation of CERCLA Section 107(c)(1)(D)(2), 42 U.S.C. § 9607(c)(1)(D)(2), for any of his actions which further and expand any or all costs to be expended in the clean up of the Area 7 portion of the Site.

A meeting may be arranged through either Mr. Thomas C. Williams of IL EPA, or through contact with Mr. Russell Hart of US EPA (312/886-4844), or you may contact me at 312/886-6613. If we cannot come to an accord and agreement on these matters of access and proper control of the Area 7 Superfund Site, then it may be necessary for US EPA and IL EPA to seek a federal court order restraining Mr. Ekberg from the activities I have mentioned.

Very truly yours,



Thomas Turner
Associate Regional Counsel

cc: R. Hart, RPM (SR-6J)
US EPA

M. Reed, Esq/F. Biros, Esq.
US Dept. of Justice - ENRD/EES

T. Williams, Project Manager
IL EPA - LaSalle, IL Office

P. Jagiello, Esq.
IL EPA Law Section

E. Wallace, Esq.
IL AG Office



009000

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 29, 2004

SENT BY FACSIMILE

James E. Meason
113 W. Main St.
Rockton, Illinois 61072

Re: Southeast Rockford Groundwater Contamination Site
Ekberg Park - 2010300074-Winnebago County

Dear Mr. Meason:

Per our telephone conversation of this date regarding the Grant Of Access sent to you on December 24, 2003 and again on March 19, 2004, please provide a signed access agreement no later than April 19, 2004. As we explained, the Illinois EPA must begin work in the spring in order to utilize the existing QAPP. If we do not receive a signed access agreement by April 9, 2004, we will be forced to seek access from the federal district court.

We appreciate your cooperation in this matter and look forward to resolving the access issue in the near future. If you have any questions or if you wish to discuss this matter further, please contact me at the phone number below.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Elizabeth Wallace".

Elizabeth Wallace
Senior Assistant Attorney General
Environmental Bureau
188 W. Randolph, 20th Flr.
Chicago, Illinois 60601
(312) 814-5396

cc: Mary Reed, DOJ



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 19, 2004

James E. Meason
113 W. Main St.
Rockton, Illinois 61072

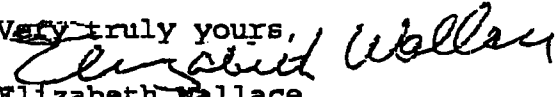
Re: Southeast Rockford Groundwater Contamination Site
Ekberg Park - 2010300074-Winnebago County

Dear Mr. Meason:

Enclosed you will find a copy of a letter dated December 24, 2003, sent to Glen Ekberg regarding a Grant of Access which allows the Illinois EPA access to the area owned by Mr. Ekberg known as Ekberg Park. The purpose of the access is to allow the Illinois EPA, pursuant to an agreement with the U.S. EPA, to perform site investigation and other related activities at the Site. The enclosed letter provides more detail on the access.

We have not heard back from Mr. Ekberg regarding the access. Also, I have left you a couple of messages, and you have not returned my call. The government must have access to the property during the spring to complete the site investigation in order to move forward with the remedial action. Please provide a signed Grant of Access agreement by April 9, 2004. If we do not receive a signed agreement, we will have to utilize the Court to obtain access.

We appreciate your cooperation in this matter. If you have any questions or if you wish to discuss this matter further, please contact me at the phone number below.

Very truly yours,

Elizabeth Wallace
Senior Assistant Attorney General
Environmental Bureau
188 W. Randolph, 20th Flr.
Chicago, Illinois 60601
(312) 814-5396

cc: Mary Reed, DOJ
Paul Jagiello, IEPA



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 24, 2003

Mr. Glen Ekberg
8065 Harrisville Road
Rockford, Illinois 61109

Re: 2010300074-Winnebago County
Southeast Rockford Groundwater Contamination Site
Ekberg Park

Dear Mr. Ekberg:

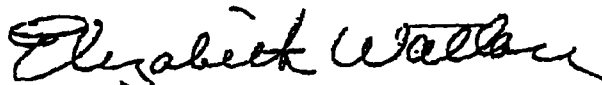
Enclosed you will find a Grant of Access, including Attachment A, which allows the Illinois EPA access to the area owned by you known as Ekberg Park, to perform site investigation and other related activities. This Grant of Access is substantially the same as the Grant of Access that you signed on May 6, 2003. As in the May 6, 2003, Grant of Access, Attachment A includes a notice provision and opportunity for you to obtain split samples for soil and groundwater, with certain conditions. The two notable differences in the enclosed Attachment A are in numbers 3 and 4. In No. 3 of Attachment A, a more detailed description for general maintenance of the groundwater monitoring wells is included. No. 4 of Attachment A provides for installation of additional monitoring wells on the property. Because the groundwater monitoring well located on the far south side of the property was found to be dry during the summer of 2003, the Illinois EPA intends to install an additional groundwater monitoring well in that location.

The effective period of the enclosed Grant of Access is from the date signed through December 31, 2004. The State originally intended that work be completed by December 31, 2003, but due to unforeseen budget issues, work was delayed. Therefore, the State is requesting access to your property through December 31, 2004.

Glen Ekberg
December 31, 2003
Page 2

Please sign the Grant of Access and return it to me in the enclosed self-addressed envelope by January 15, 2004. We appreciate your cooperation in this matter. If you have any questions or if you wish to discuss this matter further, please contact me at the phone number below.

Very truly yours,



Elizabeth Wallace
Senior Assistant Attorney General
Environmental Bureau
188 W. Randolph, 20th Flr.
Chicago, Illinois 60601
(312)814-5396

cc. James H. Monson, 119 W. Madison St., P.O. Box 119, Chicago, IL 60602-0119
Paul Jagnello, IEPA

Grant of Access

Property located near Ekberg Park in the City of Rockford, Winnebago County, Illinois. The property for which access is being granted consists generally of a north-south road including the creek, east to the western end of O'Connell St., west to the Pine Manor Subdivision and extending two hundred yards south of the east of Oak Street in the east to the creek.

1. The undersigned is the owner or lessor of real estate indicated above.
2. The undersigned hereby authorizes and consents to the entry upon the indicated property by officers, employees, authorized representatives, invitees or contractors of the State of Illinois or any of its departments, agencies, or instrumentalities, or any of them, for the purpose of the Comprehensive Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq., the Illinois Environmental Protection Act, 215 ILCS 215/1 et seq., and any other laws, rules, regulations, or orders of the Illinois Pollution Control Board.
3. The undersigned consents to allow access to the above described real estate for the work as outlined in Attachment A.
4. I certify that this Grant of Access is given voluntarily and without coercion.
5. This agreement shall remain in effect through December 31, 2004.

Date: _____

Printed name of the property owner (if applicable): _____

Signature: _____

Address: _____

Phone: _____

Company (if applicable): _____

Company Phone (if applicable): _____

Grant of Access

Property located near Ekberg Park in the City of Rockford, Winnebago County, Illinois. The property for which access is being granted extends generally north to and including the creek, east to the western end of O'Connell St., west to the Pine Manor Subdivision and extending two hundred yards south of the end of Balsam Lane in the cul-de-sac.

1. The undersigned is the owner or lessee of real estate indicated above.
2. The undersigned hereby authorizes and consents to the entry upon the indicated property by officers, employees, authorized representatives, invitees or contractors of the State of Illinois, upon showing of proper identification, for such actions as are necessary or appropriate to carry out the purposes of the Comprehensive Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.* (2002), as amended, and the rules and regulations of the Illinois Pollution Control Board.
3. The undersigned consents to allow access to the above described real estate for the work as outlined in Attachment A.
4. I certify that this Grant of Access is given voluntarily and without coercion.
5. Site access shall remain in effect through December 2004.

Date: _____

Printed name of the property owner (if applicable):

Signature: _____

Address: _____

Phone: _____

Company (if applicable): _____

Company Phone (if applicable): _____

Attachment A

Activities to be performed on the property relating to the June 11, 2002 Record of Decision.

1. Surveying of the property. The surveying activity will include personnel and vehicles associated with professional surveying.
2. Soil borings that will include the collection of soil samples and soil gas samples with a truck mounted geoprobe.
3. Collection of groundwater samples from existing wells and this will include general maintenance of the wells. General maintenance of the wells could include reconstruction of heaved concrete pads, removal and replacement of protective covers and the addition or replacement of bumper posts around the wells. Vehicles and personnel may also be required on the property.
4. Installation of additional groundwater monitoring wells, with the number of wells to be determined. The installation of groundwater monitoring wells will require a drill rig.
5. Collection of surface samples soil and water that would require personnel and vehicles.
6. Testing and possible removal of fill materials placed on the property located within Area 7 of Southeast Rockford Groundwater Contamination Site.
7. The Illinois EPA or its representative will provide Glen Ekberg at least forty-eight (48) hours notice of soil and/or water sampling events for soil and/or water samples taken from property owned by Glen Ekberg.
8. The Illinois EPA or its representative agree to split soil and/or water samples with Glen Ekberg for samples taken from property owned by Glen Ekberg for those samples with sufficient volume for splitting. Glen Ekberg must provide sample containers and bottles for the samples to be split.
9. Soil gas samples and soil samples taken from a geoprobe will not be split because there will be insufficient sample volume to split. For health and safety reasons, an Exclusion Area will be specified in the Health and Safety Plan for the work to be performed at the site, including the soil and water sampling work. For health and safety reasons, only the Illinois EPA or its representatives will be able to work within the designated Exclusion Area.
10. It is suggested, for health and safety reasons, that anyone in the area of work being performed have personal protective equipment to Level B (full face respirator) available and that would include those at the site outside of the Exclusion Area.
11. Any sample to be split will be taken by the Illinois EPA or its representatives and Glen Ekberg or his representative can view the sampling activity from outside the Exclusion Area.

Thomas Turner
04/12/2004 01:12 PM

To: "Reed, Mary" <MaReed@ENRD.USDOJ.GOV>
cc: "Biros, Frank" <FBiros@ENRD.USDOJ.GOV>, "Mallory, Monica"
<Monica.Mallory@usdoj.gov>
Subject: Re: FW: Discovery and Site Access YOU WILL GET AN EYE
OPENER HERE - [img]

Talked to Beth Wallace on Friday (4/9), and was part of a brief call to Jim Meason, when he mentioned part of this. You are right.
"Reed, Mary" <MaReed@ENRD.USDOJ.GOV>



"Reed, Mary"
<MaReed@ENRD.USDOJ.GOV>

04/12/2004 12:08 PM

To: "Biros, Frank" <FBiros@ENRD.USDOJ.GOV>, "Mallory, Monica"
<Monica.Mallory@usdoj.gov>, Thomas Turner/R5/USEPA/US@EPA
cc:
Subject: FW: Discovery and Site Access YOU WILL GET AN EYE OPENER
HERE -

-----Original Message-----

From: jimmeason@yahoo.com [mailto:jimmeason@yahoo.com]

Sent: Friday, April 09, 2004 10:06 PM

To: Reed, Mary

Subject: Discovery and Site Access

Hi Mary,

I met with Mr. Ekberg today, and he gave me a few photos from the mid 60s of his kids on the farm. He also promised to give me any documents relating to charitable giving, as well as the TransEnvironmental report he commissioned late last year.

Turning to site access, he has decided to not agree to let IEPA on his property over concerns about poking holes through the clay layer.

Finally, he says the Lord has allowed his family to learn a lot of new information about the site, that the Lord is getting out the truth, and that he and his wife have discussed that even if they lose everything as a result of this case, it will be for the glory of God.

Happy Easter,

Jim

Do you Yahoo!?

Yahoo! Tax Center - File online by April 15th



tmp.htm

Illinois EPA - Division of Legal Counsel
9511 West Harrison Street
Des Plaines, Illinois 60016
847/294-4000 - 294-4083(Fax)

facsimile transmittal

To: Tom TURNER

Fax: 312/886-0747

From: PAUL JAGIELLO

Date: 9/2/2004

Re: SE ROCKFORD

Number of Pages
including cover: 3

CC:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

IMPORTANT - THIS COMMUNICATION IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHOM IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THE COMMUNICATION IS NOT THE RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT READING, DISSEMINATING, DISTRIBUTING, OR COPYING THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US BY TELEPHONE AND RETURN THE ORIGINAL COMMUNICATION TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

Glen Elberg Grantelawson

Exhibit D

May-05-04 02:43pm From: IAGO-ENVIRONMENTAL BUREAU

05/04/2004 15:45 8156245905

May-14-04 11:36am From: IAGO-ENVIRONMENTAL BUREAU

+3128142347

ALLY JLM MENDLIN

+3128142347

T-807 P.003/003 F-258

T-807 P.004/004 F-258

Grant of Access

Property located near Sieberg Park in the City of Rockford, Winnebago County, Illinois. The property for which access is being granted extends generally north to and including the creek, east to the western end of O'Connell St., west to the Pine Manor Subdivision and extending two hundred yards south of the end of Balsam Lane in the cul-de-sac.

1. The undersigned is the owner or lessee of real estate indicated above.
2. The undersigned hereby authorizes and consents to the entry upon the indicated property by officers, employees, authorized representatives, invitees or contractors of the State of Illinois, upon showing of proper identification, for such actions as are necessary or appropriate to carry out the purposes of the Comprehensive Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 et seq., the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq. (2002), as amended, and the rules and regulations of the Illinois Pollution Control Board.
3. The undersigned consents to allow access to the above described real estate for the work as outlined in Attachment A.
4. I certify that this Grant of Access is given voluntarily and without coercion.
5. Site access shall remain in effect through December 2004.

Date: 5-4-04

Printed name of the property owner (if applicable):

Signature: Alan W. Phibey

Address: _____

Phone: _____

Company (if applicable): _____

Company Phone (if applicable): _____

Attachment A

Activities to be performed on the property relating to the June 11, 2002 Record of Decision.

1. Surveying of the property. The surveying activity will include personnel and vehicles associated with professional surveying.
2. Soil borings that will include the collection of soil samples and soil gas samples with a truck mounted geoprobe.
3. Collection of groundwater samples from existing wells and this will include general maintenance of the wells. General maintenance of the wells could include reconstruction of heaved concrete pads, removal and replacement of protective covers and the addition or replacement of bumper posts around the wells. Vehicles and personnel may also be required on the property.
4. Installation of additional groundwater monitoring wells, with the number of wells to be determined. The installation of groundwater monitoring wells will require a drill rig.
5. Collection of surface samples soil and water that would require personnel and vehicles.
6. Sampling and possible moving of fill materials placed on the property located within Area 7 of the Southeast Rockford Groundwater Contamination Site. Fill material will be moved only if Illinois EPA, USEPA, or their contractors, at their sole discretion, determine that it is necessary to move fill materials for purposes of performing the remedial design at the site.
7. The Illinois EPA or its representative will provide Glen Ekberg at least forty-eight (48) hours notice of soil and/or water sampling events for soil and/or water samples taken from property owned by Glen Ekberg.
8. The Illinois EPA or its representative agree to split soil and/or water samples with Glen Ekberg for samples taken from property owned by Glen Ekberg for those samples with sufficient volume for splitting. Glen Ekberg must provide sample containers and bottles for the samples to be split.
9. Soil gas samples and soil samples taken from a geoprobe will not be split because there will be insufficient sample volume to split. For health and safety reasons, an Exclusion Area will be specified in the Health and Safety Plan for the work to be performed at the site, including the soil and water sampling work. For health and safety reasons, only the Illinois EPA or its representatives will be able to work within the designated Exclusion Area.
10. It is suggested, for health and safety reasons, that anyone in the area of work being performed have personal protective equipment to Level B (full face respirator) available and that would include those at the site outside of the Exclusion Area.
11. Any sample to be split will be taken by the Illinois EPA or its representatives and Glen Ekberg or his representative can view the sampling activity from outside the Exclusion Area.
12. The Illinois EPA will inform its contractors of the property owner's concerns of the possibility that a clay layer may exist.

Initials: _____

Illinois EPA - Division of Legal Counsel
9511 West Harrison Street
Des Plaines, Illinois 60016
847/294-4000 - 294-4083(Fax)

facsimile transmittal

To: Tom TURNER Fax: 312/886-0747
From: PAUL JABIELLO Date: 8/31/2004
Re: SE ROCKFORD Number of Pages
including cover:
CC:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

IMPORTANT - THIS COMMUNICATION IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHOM IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THE COMMUNICATION IS NOT THE RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT READING, DISSEMINATING, DISTRIBUTING, OR COPYING THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US BY TELEPHONE AND RETURN THE ORIGINAL COMMUNICATION TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

Exhibit E

Attn: Tom Williams

August 30, 2004

Illinois Environmental Protection Agency
Tom Williams, RPM
4302 North Main Street
Rockford, IL 61103


Re. May 4, 2004 Access Agreement

Mr. Williams:

This letter is to inform you of my decision to rescind the above-mentioned agreement, effective immediately. I am rescinding it because you and the IEPA have violated the letter and spirit of the access agreement and the 2002 Record of Decision.

The Access Agreement was intended to provide protocol for access to Area 7, as defined in Phase I, Phase II and the 2002 Record of Decision. This was not intended to give you unlimited access to the entire parcel of land. The contractors and sub-contractors have begun activities on areas outside the scope of the 2002 ROD and outside of what is defined as Area 7.

Additionally, the IEPA and its contractors and sub-contractors have violated the Access Agreement by not communicating the nature and duration of the activity that has been done or is planned to be done. Dean Ekberg attempted to ask onsite workers regarding the nature of the activities, but they refused to respond and failed to provide their credentials throughout the week of August 23, 2004.


Glen Ekberg
8065 Harrisville Rd.
Rockford, IL 61109

DECLARATION OF JOHN GRABS

I, John C. Grabs, under penalty of perjury, declare as follows:

1. My name is John C. Grabs. I have been employed by Camp Dresser & McKee (CDM) for over 4 years. During the first three years of my employment with CDM, I was with CDM Federal in New York City. During the past year, I have been with CDM, Inc., in Chicago.
2. Over the past four years, my responsibilities have included task and project management of various environmental projects under contract to USEPA Region 2, USACE (KC District), Illinois EPA, and Chicago Department of Environment. I have also provided general support to projects under contract to other public agencies and private industry. I am also a group leader for the Environmental Management and Planning Division of CDM.
3. My specific responsibility related to the SE Rockford Groundwater Contamination Superfund Site (SE Rockford) is that of Project Manager. I am responsible for scheduling, staffing, and financial management of the projects being conducted by CDM under contract to Illinois EPA. Individual projects under SE Rockford include: Area 4 remedial design (RD); Indoor Air Sampling Study; Area 7 Pre-Design Sampling; and Area 9/10 Pre-Design Sampling.
4. Field work being performed at Area 7 consists of several tasks with different objectives; however, the overall objective is to obtain information necessary to complete the Area 7 RD. The field work tasks being conducted, and the specific objectives of each are described in Paragraphs 5 through 8.
5. Soil gas sampling and soil sampling - performed on the northern portion of Area 7 to determine if any waste material was deposited in this area; no sampling had been previously conducted in this area. This work was substantially completed.
6. Monitoring well installation - MW-135B is being installed to monitor groundwater in the bedrock below MW-135; two other monitoring wells are being installed for long-term monitoring of the eventual remedial action (RA), and to obtain groundwater samples for metals analysis (iron and manganese concentrations) that will be required for design of the groundwater treatment system. This work was partially completed.
7. Monitoring well sampling - sample all monitoring wells, including recently installed wells, in and around Area 7 to obtain comprehensive and current "snap shot" of Area 7 groundwater contamination necessary for completion of RD. Of the 25 existing Area 7 wells, 8 are located on Glen Ekberg's property. This work is currently scheduled for the week of September 27, 2004.
8. Topographic survey - to be completed in the fall after ground cover and foliage has died off for the year; essential data need for completing the RD. This work was not started.
9. Field work for Area 7 Pre-Design Sampling began with mobilization (staking sampling locations) on August 23, 2004 in accordance with the schedule set fourth in the letters

Exhibit F

from Thomas C. Williams, Illinois EPA, to Glen Ekberg, dated August 9 and August 19, 2004. Field work was being performed pursuant to the Grant of Access (including Attachment A) signed by Glen Ekberg, dated May 4, 2004. All field work proposed and subsequently conducted was within the boundaries of Area 7 indicated in Figure 1 of the OU3 Record of Decision, dated June 11, 2002.

10. On Monday, August 23, 2004, while Tom Williams and I were conversing, north of the park in the area of proposed soil and soil gas sampling, Dean Ekberg came out and immediately started asking what we were doing on his property. This was about 11:30. Exact arrival and departure times can be found in the field logbook kept by Dave De Courcy-Bower. During most of the conversation, Mr. Ekberg was shouting and being verbally abusive.

11. Tom Williams replied that we were performing the work specified in the letters previously sent to him (his father). After this went back and forth for a minute, Mr. Ekberg turned his attention to me and asked if I was with CDM. After I replied yes, Mr. Ekberg continued on the same line of questions (i.e., what work are we doing) by asking how many holes we were going to punch through the clay layer. I don't recall our exact response to that question, but it was in line with previous findings that indicate the clay layer at Area 7 is not continuous, but Mr. Ekberg then starting asking me about the findings of some unspecified CDM report from 10 or so years ago. I replied that had no knowledge of the report.

12. It was at that point that I left to go and help the field crew stake the locations. Although I could not hear all the details, Mr. Ekberg continued to shout at Tom Williams before eventually departing the site about 15 minutes after he arrived.

13. After the completion of staking sampling locations, CDM departed the site.

14. On Tuesday, August 24, 2004, CDM began conducting groundwater screening points in accordance with the letters sent to Glen Ekberg. As it turned out, refusal (unable to penetrate any deeper) was encountered before any groundwater samples could be collected.

15. Dean Ekberg arrived at about 14:00 while CDM was performing groundwater screening points south of the park.

16. Once again, Mr. Ekberg was shouting and being abusive. He asked what we were doing on his property, and what work we were doing. I replied that we were doing the work specified in the letters sent to him by Illinois EPA. He asked my name, and I replied that I was with CDM, Illinois EPA's representative. Both of these questions went back and forth with him repeating his questions and me repeating the same answers. He then called me a Nazi and asked why I couldn't just be an American several times. Eventually, I did tell him that we were doing groundwater screening points and that we had not collected any groundwater samples. He then replied, "Was that so hard?" and I had the impression that he was fully aware of the work we were conducting.

17. He asked for Tom Williams' phone number, and when I told him Tom was not in the office, Dean asked for the Springfield number so he could call Terry Ayers. I gave him the main number for Springfield.

18. I left the exclusion zone area to go call Terry Ayers to notify him of a phone call from Mr. Ekberg. When I returned, I received a call from Tom Williams directing me to provide general information regarding what we were doing (e.g., type of work, depth penetrated, samples collected). As I did that, Mr. Ekberg became less abusive.

19. After I answered a number of his questions (how many screening points [5], how deep [varies], how many more [none], how many samples [none]), Mr. Ekberg asked why he couldn't go into the exclusion zone even though it was his property. I told him it was an OSHA and liability issue. Although he clearly was not very happy with my answer, he did not continue questioning on that line.

20. The last exchange I had with Mr. Ekberg was him asking if "EPA" was going to repair the damage to his property. I told him he would have to discuss that with "EPA." He then made statement about how his property had been "destroyed." As I glanced around, I stated that it didn't look "destroyed quite yet." He then stated something to the effect that the hay being flattened meant his property was destroyed.

21. At approximately 15:00, Mr. Ekberg departed.

22. During the week of August 23, 2004, groundwater screening points and soil gas samples were collected. These are the activities that were specified in the August 9 and 19, 2004 letters to Glen Ekberg.

23. On Monday, August 30, 2004, CDM began collection of soil samples and installation of monitoring wells as specified in the August 9 and 19, 2004 letters. CDM collected soil samples with a Geoprobe, and installed monitoring well MW-135B. One soil sample was collected during the installation of MW-135B.

24. On Tuesday, August 31, 2004, CDM continued with collecting soil samples with a Geoprobe and began installation of MW-X1 (temporary name given to the well location directly west of MW-135). Glen and Dean Ekberg arrived on site at approximately 13:00, walked into the exclusion zone with no observable personal protective equipment, and provided me with a signed copy of the letter rescinding access, and a fax transmission verification report for the letter that was faxed to Tom Williams at Illinois EPA's Springfield office.

25. Dean Ekberg stated that they were revoking the previously granted access, and that we had to get off his property. After I read the letter, I told the rig geologist and drill crew to shut down. During this time, Dean Ekberg was standing near the soil cores that had been brought up during the drilling. Dean Ekberg stated that he was going to go get the bottles that he had previously given Corey Johnson and asked if he could get a split sample. I told him that because he was kicking us off his property we would not be able to give him any split samples. Dean Ekberg then stated we had to get off his property immediately, and both Ekbergs departed.

26. At the time, the MW-X1 borehole had been advanced to a depth of 85 feet below ground surface (bgs). Previously at a depth from 60 to 75 feet bgs, a silty clay layer was encountered. In accordance with Attachment A of Grant of Access, CDM closely inspected the clay layer and the material immediately above the clay layer. Because a photoionization detector (a field instrument that measures the total concentration of volatile organic compounds) indicated no contamination, and there was no free water above the clay layer, I made the decision not to "case-off" the portion of the borehole above the clay layer because there was no indication of contamination, and no water that could carry any undetected contamination down below the clay layer. However, CDM collected a sample from the material directly above the clay layer to confirm the absence of contamination.

27. After making a number of phone calls to Tom Williams, Terry Ayers, Paul Jagiello (Illinois EPA attorney), and Beth Wallace (Assistant Attorney General), Paul Jagiello returned my call and instructed us to leave the Ekberg property. We then went down to the park area to await further instruction. Eventually, I talked with Tom Williams, and he said that we should abandon the borehole and remove the drill rigs from the site. This was completed by the morning of Wednesday, September 1, 2004.

28. The total cost resulting from Mr. Ekberg rescinding access, and having to return to the site at a later date to complete the work is estimated to be approximately \$20,000. This cost consists of CDM and driller standby time (\$5,000), remobilization (\$10,000), and well abandonment (\$5,000). This does not include costs for potentially having to reschedule monitoring well sampling current proposed for the week of September 27, 2004. This cost will probably be no more than \$5,000.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on: September _____, 2004
Chicago, IL

John C. Grabs, P.G.
Project Manager
Camp Dresser & McKee Inc.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 07 2004

VIA FACSIMILE
AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED

REPLY TO THE ATTENTION OF

C-14J

Mr. Glen W. Ekberg
c/o: James Hess, Esq.
10989 Shaw Road
Rockford, IL 61114-6815

Re: Southeast Rockford Groundwater Contamination Superfund Site,
Source Area 7, Rockford, Winnebago County, IL
Notice of Noncompliance with April 21, 2004
United States Environmental Protection Agency
Unilateral Administrative Order #V-W-04-C-786

Dear Mr. Hess:

We have received a copy of your client's letter to Illinois Environmental Protection Agency (IEPA) in which Mr. Ekberg rescinds an agreement that he entered into at a meeting on April 28, 2004, at the United States Environmental Protection Agency ("U.S. EPA") offices in Chicago to discuss the Unilateral Administrative Order ("UAO") #V-W-04-C-786 issued by EPA on April 21, 2004. While this agreement is separate from the UAO, Mr. Ekberg's attempt to now deny access under the UAO as a result of his recision of this agreement constitutes a failure to comply with the provisions (at Section V, Paragraph 21) of the UAO, which remains in effect pursuant to Section XI Paragraph 32. If Mr. Ekberg continues in this course of action, he may become subject to civil penalties of up to \$32,500 per violation per day. See, Section 106(b)(1) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9606(b)(1). Continued violation of the provisions of the UAO can also result in treble punitive damages against a Potentially Responsible Party ("PRP") for any cost incurred by U.S. EPA, as a result of the violation. See, Section 107(c)(3) of CERCLA, 42 U.S.C. §9607(c)(3).

The action of rescinding the access agreement with the State of Illinois is impeding the overall progress of the response actions at the Site, and at Area 7 in particular. U.S. EPA has determined that Mr. Ekberg is in noncompliance with the Order, and may face enforcement sanctions under CERCLA.

In case you are unfamiliar with the case law, federal courts have clearly settled the premise that CERCLA Section 104 is directly enforceable as a penalty provision in cases of PRP noncompliance. In U.S. v. George Trucking Co., 823 F.2d 685 (1st Cir. 1987), the court held that a combined CERCLA and Resource Conservation and Recovery Act case for penalties as a result

Exhibit G

of PRP noncompliance with access for information orders was properly brought after U.S. EPA had exhausted its administrative actions, and that penalties of \$20,000 per PRP for "intransigent failure to reply" were in order. *Id.*, 823 F.2d at 687. Further, courts have held that where U.S. EPA demonstrates a "reasonable basis" for believing that there has been a release or there exists a threat of release of hazardous substances into the environment, then the use of CERCLA 104(e)(5)(B) access authority (and its potential penalty provisions) is acceptable and will be upheld on review. See, Dickerson v. Administrator, Environmental Protection Agency, 834 F.2d 974, at 976-977 (11th Cir. 1987). Finally, the Seventh Circuit has upheld U.S. EPA's exercise of its CERCLA Section 104 authority in seeking access, especially when it maintains justification based on a number of factors including the prior inclusion of Site on the National Priorities List (NPL) at 42 U.S.C. Part 300, B. This factor, coupled with the prior findings of hazardous substances during a U.S. EPA inspection, were sufficient for the court to uphold application of U.S. EPA's Section 104 access authority. See, U.S. v. Fisher, 864 F.2d 434, at 437 (7th Cir. 1988). In this case, not only is Mr. Ekberg's portion of Area 7 completely within the scope of the Southeast Rockford Groundwater Contamination Superfund Site that has been placed on the NPL; but that the specific and uncontested June 2002 Record of Decision (ROD) for the Site has indicated repeated and consistent findings of hazardous substances at the Site.

U.S. EPA hereby requests that Mr. Ekberg assess his position and take any and all reasonable steps to achieve compliance with provisions of the UAO. Please advise me in writing as soon as possible after receipt of this letter concerning your client's position in this matter and anticipated response, but not later than September 10, 2004. Please be aware that failure to respond by the September 10, 2004 deadline will be treated as a denial.

Please feel free to contact me with any questions or concerns at 312/886-6613.

Sincerely yours,



Thomas Turner
Associate Regional Counsel

Enclosure - UAO, April 21, 2004

cc: R. Hart, RPM (SR-6J)
U.S. EPA-Region 5

M. Reed/F. Biros, Trial Attorneys
U.S. DOJ

M. Mallory, AUSA
U.S. DOJ

E. Wallace, Asst. IL AG
Office of Illinois AG - Chicago, IL

James M. Hess

Attorney at Law
10989 Shaw Road
Rockford, Illinois 61114
Phone (815) 885-1523 Fax (815) 885-3973

TO: Thomas Turner
Assoc. Regional Counsel

FROM: James M. Hess

COMPANY: USEPA

DATE: 9/9/04

FAX NO: (312) 886-0747

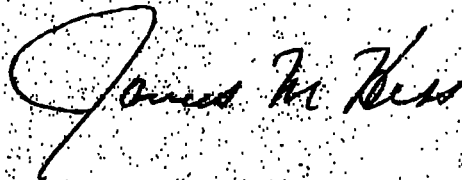
TOTAL PAGES
including this page: two (2)

If you do not receive all pages, please call (815)885-1523.

MESSAGE: RE: Glen W. Ekberg

Dear Mr. Turner:

Attached is my response to your letter of 9/7/04.



Hard copy ☐ will ☒ will not follow.

IMPORTANT

This message and the attachments, if any, are intended only for the use of the individual or entity to which it is addressed and may contain information which is privileged, confidential, or exempt from disclosure under applicable law.

If you are not the intended recipient, any dissemination, distribution, or copying of this communication is prohibited; except that if you are an agent of the intended recipient, you may deliver this message.

If you have received this communication in error, please notify me immediately. Thank you.

Exhibit H

BY FACSIMILE

James M. Hess
Attorney at Law
10000 Shaw Road
Rockford, Illinois 61114
Phone (815) 885-1523 Fax (815) 885-3889

September 9, 2004

Thomas Turner, Esq.
USEPA
77 West Jackson Blvd.
Chicago, Illinois 60604

RE: Glen W. Ekberg

Dear Mr. Turner:

I am in receipt of your letter of September 7, 2004, regarding rescission of the access agreement for violation of its terms.

Specifically, 12 of the Grant of Access provides that entry is conditioned "upon showing of proper identification." On August 24, 26, and 30, while at the site, Dean Ekberg, at the behest of his father, asked personnel who were performing tests to identify themselves. On each occasion, identification was refused; and on the last day, he was advised that the EPA said they did not have to talk to him.

Furthermore, 18 of Attachment A of the Grant of Access provides that soil and water samples will be split with Mr. Ekberg. Dean Ekberg made a request for splitting of the samples being taken and indicated that he had the appropriate "sample containers and bottles." This request was refused.

Based upon the above, it appears the access agreement has been intentionally violated by EPA contractors. Mr. Ekberg fully intended to abide by the access agreement and assumed you would also. Unless and until he can be assured that there will be compliance with the agreement, access will be denied.

Sincerely,

James M. Hess
James M. Hess

JMH:sh
cc: Glen W. Ekberg



United States Environmental Protection Agency
Washington, DC 20460

CERCLA CIVIL REFERRAL FORM

RESERVED FOR DATA ANALYST'S USE

RMTS Matter No.

Date Entered

Analyst's
Initials

CASE NAME (Lead or principal defendant, not site or facility) Southeast Rockford Groundwater Contamination SF Site - Glen W. Ekberg

STATE IL **TYPE CASE** ☒ CIV = Civil **HQ DIVISION** ☐ AIR
ORC BRANCH MMI ☐ PRN ☒ ACC = Access order ☐ COL = Collection Action ☐ RCRA
ORC SECTION IV ☐ BNK = Bankruptcy ☐ COL = Civil Judgment/Decree Enforcement ☐ TOXICS
☐ WATER

LAWS/SECTIONS: DO NOT use USC or CFR designations.

1. CERCLA ☐ 103(a) ☐ 104(e)(2): Information ☐ 106(a) ☐ 108 ☐ 122(e)(3)(B)
☐ 103(d)(2) ☒ 104(e)(3): Access ☐ 106(b) ☐ 109 ☐ 122(h)(3)
☐ 104(e)(4): Inspection/Sampling ☐ 107(a) ☐ 122(l)
☐ 107(c)(3)

REGIONAL TECHNICAL CONTACT: (Last Name) HART (1st init.) RUSSELL **PHONE:** 312/886-4844

REGIONAL ATTORNEY: (Last Name) Turner (1st init.) Thomas **PHONE:**

PRPs (All must be listed. Attach list, if necessary.)

1. Mr. Glen W. Ekberg

2.

3.

4.

5.

6.

7.

8.

9.

Is the site on the NATIONAL PRIORITY LIST (NPL)? ☒ Yes ☐ No

REFERRAL WITH CONSENT DECREE? (CIV Type Case Only) ☐ Yes ☒ No

Is this action to ENFORCE an ADMINISTRATIVE ORDER? ☒ Yes ☐ No

RELIEF SOUGHT IN REFERRAL (Check as many boxes as apply.)

☐ IRMV (Injunctive Removal) ☐ CRMV (Cost Recovery Removal)
☐ IRFS (Injunctive RI/FS) ☐ CRFS (Cost Recovery RI/FS)
☐ IRD (Injunctive Remedial Design) ☐ CRD (Cost Recovery Remedial Design)
☒ IRA (Injunctive Remedial Action) ☐ CRA (Cost Recovery Remedial Action)
☒ PEN (Penalty) ☐ COTH (Other Cost Recovery, e.g., bankruptcy for future costs)
☐ COL (Collection)

REFERRAL INDICATOR (Not Applicable at PRN Stage)

☒ RD: Region to DOJ
☐ RH: Region to HQ
☐ RU: Region to US Attorney
☐ HD: HQ to DOJ

DATE PRN SENT

DATE OF REFERRAL September , 2004

SITE OR FACILITY DATA (Please use the address of the site of violation. **DO NOT** use the mailing address, defendant's address, or a P.O. Box number.)

Facility Name: Source Area 7 of the SE Rockford Groundwater Contamination SF Site - (IL) (SF i.d.# 05DK)

Street Address: _Vicinity of Ekberg Park, Part of 10 sq. mile SF Site

City Rockford... State: _IL Zip Code: 64114

FINDS ID NO.: _____

**** If there is more than 1 site of violation, please add information for each site on additional paper.**

CASE SUMMARY (Attach additional pages if necessary.) SE Rockford Groundwater Contamination SF Site is a Site involving a 10 sq. mile area of Rockford, IL subject to a moving plume of contaminated groundwater, with soils contamination. A June 2004 ROD issued by US EPA and IL EPA determined a course of action for RD/RA at four principal Source Areas (4, 7, 9/10 and 11). This is a referral for the enforcement of a CERCLA Section 104(e)(5) access UAO issued in April 2004 to the owner/operator of a portion of Source Area 7, Mr. Glen W. Ekberg. Mr. Ekberg granted IL EPA, US EPA and contractors access in May 2004, but then rescinded the access in August 2004. In September 2004, US EPA issued a Notice of Noncompliance, and Mr. Ekberg continued to refuse access. At the request of the IL EPA (which is currently paying a contractor for performance of necessary RD sampling) US EPA is pursuing this enforcement alternative. Mr. Ekberg is already a defendant in a cost recovery and future cost case brought by the US DOJ in December 2001.